IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 51 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MEHSANA DISTRICT CO-OP.MILK PRODUCERS UNION LTD.
Versus
COMMISSIONER OF INCOME-TAX

Appearance:

MR JP SHAH for the Petitioner
MR AKIL QURESHI for MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 02/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee as well as the revenue, the following 9 questions have been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A' under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') :

At the instance of the assessee :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in its interpretation and application of sec. 35-C of the Income-tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that entire expenditure of Rs. 27,80,627/-- was not eligible for weighted deduction u/s 35-C of the Income-tax Act?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that only 10% of the expenses incurred on dissemination of information or demonstration of modern techniques and methods of agricultural animal husbandry or dairy or poultry farming or advice on such technique or method is eligible for deduction u/s 35-C of the Income-tax Act?

At the instance of the revenue :

4. Whether the Appellate Tribunal has been right in law and on facts in coming to the opinion that the relief u/s 35-C of the Income-tax Act, 1961, requires to be granted to the assessee at 10% of the expenditure as claimed by the assessee for assessment year in question?

At the instance of the assessee :

5. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in treating the roads as 'Building' and not eligible to depreciation as 'plant'?

At the instance of the revenue :

6. Whether the assessee is entitled in law to the depreciation on fencing at the rate of 10% applicable to plant?

At the instance of the assessee :

7. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that contribution made as per the provisions of sec. 69 of the Gujarat Rajya Sahakari Co-operative Societies Act is not deductible in computation of total income?

At the instance of the revenue :

8. Whether the Appellate Tribunal has not erred in law and on facts in holding that work in progress should be included in computation of capital employed for granting relief as claimed for assessment year 1979-80?

At the instance of the assessee :

9. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that depreciation is not admissible on 30% of the value of the plant & Machinery received by way of subsidy from the Government?

2. So far as question Nos. 1 to 4 are concerned, it has been submitted by the learned advocates that this Court has decided the said issues in I.T.R. No. 32 of 1987. As per the law laid down by this Court, all the first four questions, which have been referred to this Court hereinabove, shal have to be answered in the negative i.e. in favour of the assessee and against the revenue.

3. So far as question No. 5 is concerned, it has been submitted by the learned advocates that the said question has been answered in case of CIT v. Kaira District Co-operative Milk Producers' Union Ltd., 247 ITR 314. In view of the ratio of the judgment delivered in the said case, we answer question No. 5 in the affirmative i.e. in favour of the revenue and against the assessee.

4. So far as question No. 6 is concerned, it has been submitted by the learned advocates that the said question has been answered in I.T.R. No. 55/98. It has been answered in the negative. We therefore answer the said question in the negative i.e. against the assessee and in favour of the revenue.

5. So far as question No. 7 is concerned, it has been submitted by the learned advocates that the said question has also been answered in case of CIT v. Kaira District Co-operative Milk Producers' Union Ltd, 247 ITR 314. In view of the ratio of the said judgment, we answer question No. 7 in the negative i.e. in favour of the assessee and against the revenue.

6. So far as question No. 8 is concerned, it has been submitted that the said question has been answered in the affirmative in case of CIT v. Alcock Ashdown & Co. Ltd., 224 ITR 353. In the circumstances, in respectful agreement with the said judgment, we answer the said question in the affirmative, i.e. in favour of the assessee and against the revenue.

7. So far as the last question, namely, question No. 9 is concerned, it has been submitted by the learned advocates that the said question has also been decided by this court in the case of the assessee itself in I.T.R. No. 290/84. As per the said judgment, the Tribunal was in error in holding that depreciation was not admissible on 30% of the value of the plant and machinery which was received by way of subsidy from the Government. In view of the judgment delivered in ITR No. 290/84, we answer question No. 9 in the negative i.e. in favour of the assessee and against the revenue.

The reference thus stands disposed of with no order as to costs.

(A.R. Dave, J.)

(hn) (D.A. Mehta, J.)